

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN S. BAUMAN and U.S. POSTAL SERVICE,
POST OFFICE, Ridgeley, WV

*Docket No. 03-1041; Submitted on the Record;
Issued June 19, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

On February 23, 2001 appellant, then a 52-year-old distribution clerk, filed an occupational disease claim alleging stress. Appellant stated that the following events contributed to his emotional condition: (1) when Helen Bingham became the new postmaster he felt that he was being placed under much more stress, in some instances, he had mail taken out of his hands and was sent home and Ms. Bingham distributed the mail; (2) Ms. Bingham disliked Vietnam veterans; (3) two coworkers, Paula Macklen and Michael Thomas, were having an extramarital affair and behaved inappropriately in the workplace and other coworkers did not approve; (4) Ms. Macklen and Mr. Thomas controlled the whole office; (5) appellant was denied leave on Labor Day 2000 and Ms. Macklen got the day off; (6) appellant feared that Ms. Macklen's husband would act violently in the workplace; (7) work hours and assignments were given to other employees that appellant felt should be given to him; and (8) appellant was paid by mileage for delivering mail outside the office when female employees were paid by the hour.

By letter dated May 22, 2001, the Office of Workers' Compensation Programs requested additional factual and medical evidence.

Appellant submitted a statement from the exspouse of Ms. Macklen indicating that Mr. Thomas had threatened him with violence. A coworker, Lois McGreevy, indicated that appellant had received a less advantageous schedule than Ms. Macklen even though he was a senior clerk. She also indicated that she saw Ms. Macklen and Mr. Thomas "in each others arms" and that Ms. Macklen was constantly "rubbing up against him" and that Mr. Thomas was very "nasty" towards appellant. She mentioned that Mr. Thomas was also "nasty" towards her and cursed her but did not describe any specific incidents. Last, Ms. McGreevy said that the

stress in the office was “so thick that you could cut it with a knife.”¹ Coworker Larry Waybright alleged that there was a “clique” at the post office, comprised of four people including Ms. Macklen and Mr. Thomas, and that if you were not a part of this “clique” then you were “screwed.” He alleged that he had been victimized, wrongfully accused and treated rudely by managers and coworkers because he was not in the “clique.” Coworker Terrie Rogers stated that the Ridgeley Post Office was the most stressful place that she has ever worked and noted that she was considering quitting. Coworker Thomas Smith stated that he was continuously harassed and made fun of and called names by management and coworkers because of his speech impediment and because he was married to a Korean woman.

Appellant also submitted medical evidence in support of his claim. Dr. Steven Crossland, a family practitioner, diagnosed appellant with post-traumatic stress disorder and noted that his condition began on December 27, 2000. He stated that appellant was permanently disabled and was unable to perform work of any kind. In a report dated June 6, 2001, Dr. Paul J. McCusker, a psychologist, diagnosed appellant with post-traumatic stress disorder, panic disorder and generalized anxiety disorder. Dr. McCusker noted that appellant alleged that his seniority was repeatedly disregarded, that leave time due to him was instead granted to more junior employees, and that other employees were given preferential treatment and even allowed to sleep on the job, while appellant, in contrast, was required to perform tasks that he found especially demanding, such as closing up the office by himself at night. Dr. McCusker opined that appellant’s exposure to workplace stress significantly exacerbated his psychiatric disorders, and significantly contributed to impairment of his personal and interpersonal functioning.

By decision dated August 28, 2001, the Office denied appellant’s claim for an emotional condition on the grounds that the evidence failed to demonstrate that an injury occurred in the performance of duty. Appellant disagreed with the Office’s decision and requested an oral hearing, then changed his request to a review of the written record.

In reports dated October 2 and October 18, 2002, Dr. McCusker and Dr. Crossland opined that appellant’s recent psychiatric conditions were a direct result of workplace stress.

By decision dated December 16, 2002, the Office hearing representative affirmed the August 28, 2001 decision on the grounds that appellant did not establish a compensable factor of employment.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers’ compensation. Where the disability results from an employee’s emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees’

¹ The employing establishment submitted statements from employees indicating that appellant was the one that caused problems and “talked behind peoples’ backs.”

Compensation Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.²

Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.³ The Board has held that actions of an employee's supervisor or coworkers which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act. However, for harassment to give rise to a compensable disability under the Act there must be evidence that harassment or discrimination did in fact occur. Mere perceptions alone of harassment or discrimination are not compensable under the Act.⁴ Similarly, a claimant who does implicate a factor of employment must substantiate that factor by supporting the allegations with probative and reliable evidence.⁵

In this case, the Board finds that appellant has identified no compensable work factors that are substantiated by the record and that the employing establishment has neither erred nor acted abusively or unreasonably in the administration of personnel matters. Appellant alleged that he was harassed or discriminated against in the workplace, namely that his supervisor disliked Vietnam veterans; however, he did not cite any specific examples of how he was discriminated against because of his veteran status nor did he submit any evidence to support his allegation. He also alleged that two coworkers were having an extramarital affair and behaved inappropriately in the workplace and submitted witness statements in support of his allegation. The Board has held that an employee's dissatisfaction with perceived poor management is not compensable under the Act.⁶ Also, appellant's opinion of his coworkers' actions is self-generated and falls outside the performance of duty.⁷ Appellant did not explain how the extramarital affair between the coworkers impacted his own personal employment duties and how it was related to his alleged emotional condition. Even though the witness statements did make reference to the extramarital affair they did not pertain to appellant's specific experiences at work. Next, appellant alleged that Ms. Macklen and Mr. Thomas "controlled the Office," yet he did not cite any specific examples or provide any corroborating evidence to support the allegation. He also stated that he feared that Ms. Macklen's husband would act violently in the workplace since Ms. Macklen was having an affair; however, the Board has held that fear of a future injury is not a compensable factor of employment.⁸

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁴ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁵ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁶ *Anne L. Livermore*, 46 ECAB 425 (1995).

⁷ *Id.*

⁸ *Beverly Diffin*, 48 ECAB 125 (1996).

The remaining factors that appellant alleged contributed to his emotional condition are administrative or personnel matters on the part of the employing establishment. He alleged that mail was taken out of his hands and was distributed by his supervisor and that he was sent home; however, he provided no supporting evidence to corroborate that this incident actually occurred or that his supervisor behaved unreasonably in handling the mail. He also alleged that he was denied leave on Labor Day 2000 and Ms. Macklen got the day off, that work hours and assignments were given to other employees that he felt should be given to him, and that he was paid less than other female employees for delivering mail outside the office. The Board has held that matters of leave is an administrative act that is not compensable absent evidence of error or abuse⁹ and that dissatisfaction with the type of work assigned or the desire to perform different duties does not come within coverage of the Act.¹⁰ Appellant submitted no evidence to indicate that his supervisor or the employing establishment acted unreasonably in carrying out these administrative duties.

As appellant has failed to establish any compensable factor of his federal employment, the medical evidence need not be considered.¹¹ For these reasons, appellant has not met his burden of proof in establishing that he sustained an emotional condition while in the performance of his duties and the Office properly denied his claim.

The December 16, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 19, 2003

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ *Diane C. Bernard*, 45 ECAB 223 (1993).

¹⁰ *Peggy R. Lee*, 46 ECAB 527 (1995).

¹¹ *Margaret S. Krzycki*, *supra* note 5.